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Slye Resignation Announcement

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Oct 22, 2010

I am resigning from the Truth Justice and Reconciliation Commission. I have lost my faith in the Commission's ability to fulfill even a small part of its mandate. That loss of faith comes not from the work of the staff of the Commission – highly dedicated individuals who have worked under extremely trying circumstances to move the work of the Commission forward – but from the clear lack of support from the Government of Kenya and from the still-unresolved allegations against the Chairman of the Commission.

Six months ago eight Commissioners of the TJRC petitioned the Chief Justice requesting that he constitute a Tribunal, pursuant to Article 17 of our enabling legislation, to assess allegations that have been raised against our Chairman.

Five months later three civil society organizations wrote to the Chief Justice asking about the status of our petition, and urging the Chief Justice to act upon it. The Chief Justice responded to them and copied us, indicating that he was waiting to hear from the Attorney General on the matter, which is unusual as the Attorney General has no formal role under the Act and is not a member of the independent judiciary.

The Commission has to date not received any formal response to our petition. Given that we have barely a year left to fulfill our mandate, a delay of six months or more on an issue so central to the Commission's credibility and integrity is extremely damaging. First, major civil society organizations have formally decided not to cooperate with the Commission. This is particularly problematic as some of those organizations have access to witnesses, documents, analysis, and other information that would assist the Commission in its investigations. Second, foreign donors are reluctant to support the Commission unless and until the issues around our Chairman have been addressed.

Third, the Government of Kenya has agreed to provide the Commission with only 15% of its requested budget. It is not clear if this lack of support is related to the issues raised against our Chairman or not. What is clear is that without additional financial support the Commission will be operating at a deficit in a matter of weeks. Fourth, the failure to deal with the issues raised about our Chairman has led to a leadership vacuum within the Commission, and increased tensions among Commissioners (including mistrust and failure to adhere to Commission policies and protocols).

In March 2010, the former Vice Chair of the Commission, Betty Murungi, and I wrote "A truth commission, like a court, requires that its members be both free of any actual conflict of interest, and free of any *perception* of partiality that is *reasonably* based."

It has been alleged that the Chairman is somehow linked to the Wagalla massacre. As a Commissioner for over a year, I still do not have a clear picture of the involvement of the Chairman in these and other issues we are to investigate. In January the Chairman privately told a number of us that he had never been in Wajir, and that he was certainly not there in 1984. A few weeks later he said that he did not

remember if he had attended a meeting in Wajir in February 1984. In a recent television interview he now admits he was at a meeting in Wajir in February 1984 days before the massacre. In the same interview he states that in his view the Government could not have planned to massacre its own citizens – thus publicly prejudging an issue that the Commission is required to investigate objectively and without fear or bias.

After six months of waiting for the credibility issues around the Chairman to be resolved, and in the face of minimal financial and other support from the Government, donors, civil society, and others, my confidence that the Commission will be able to make any meaningful headway on fulfilling its mandate is diminishing. The Chairman's evolving position on his alleged link to the Wagalla massacre further lessens my confidence.

It is for this reason that I announce here my intention to resign from the TJRC. I do not take this decision lightly. I uprooted myself from my home country, my home, my family, friends and loved ones, to come to work on this Commission. I have done so at considerable sacrifice, both personal and financial.

For the sake of the country, I do hope that something will be done quickly to address the problems plaguing the Commission. I hope that the Chief Justice, the Government, the Commission, or the Chairman will take steps to address credibly the issues raised about the Chairman. Even if those issues are addressed, it is by no means certain that the Commission will be able to fulfill even a small part of its mandate given the limited time and resources available. It is clear to me, however, that without those issues being addressed in a timely fashion, the Commission will continue to be seriously hindered, and its report and recommendations, no matter how well supported and reasoned, will forever be tarnished by that failure.

Ronald C. Slye is a Professor of Law at the Seattle University School of Law, and an Honorary Professor of the University of the Witwatersrand. For fifteen months he served as one of the international commissioners on the Kenyan Truth Justice and Reconciliation Commission. The views expressed here are entirely his own.